



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/170710

PRELIMINARY RECITALS

Pursuant to a petition filed December 11, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on January 19, 2016, at Racine, Wisconsin. The record was held open post-hearing for the Petitioner to submit additional information. The record was closed on February 2, 2016.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly seeks to recover FS overissuances from the Petitioner in the amount of \$1,706 for the period of July 1, 2011 – December 31, 2011, \$2,346 for the period of May 1, 2012 – November 30, 2012 and \$1,346 for the period of July 1, 2013 – December 31, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

█

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.

2. On July 13, 2015, the agency issued FS Overpayment Notices to the Petitioner informing her that the agency intends to recover FS overissuances in the amount of \$1,706 for the period of July 1, 2011 – December 31, 2011, \$2,346 for the period of May 1, 2012 – November 30, 2012 and \$1,346 for the period of July 1, 2013 – December 31, 2013. The notices also informed the Petitioner of the right to request a hearing by filing an appeal with the Division of Hearings and Appeals by October 12, 2015.
3. On December 11, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., sec. 273.15(g). A negative action can be the denial of an application or the reduction or termination of an ongoing case.

The petitioner's appeal was filed 152 days after the date of the action. At the hearing, the Petitioner testified that she attempted to contact the agency representatives several times to discuss the overpayment action but her calls were not returned. This is not sufficient cause for failing to file a timely appeal. Based on the evidence, I must conclude that the appeal is untimely and thus, no jurisdiction exists for considering the merits of the case.

CONCLUSIONS OF LAW

The Petitioner's appeal is untimely.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 5th day of February, 2016

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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Madison, WI 53705-5400

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The preceding decision was sent to the following parties on February 5, 2016.

Racine County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability